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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/631,272	07/31/2003	Marc Charles Payne	881022-7	3765
23879	7590	03/21/2005	EXAMINER	
BRIAN M BERLINER, ESQ O'MELVENY & MYERS, LLP 400 SOUTH HOPE STREET LOS ANGELES, CA 90071-2899			SZUMNY, JONATHON A	
		ART UNIT		PAPER NUMBER
				3632

DATE MAILED: 03/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/631,272	PAYNE ET AL.
	Examiner	Art Unit
	Jon A Szumny	3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 01 March 2005.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-9 is/are pending in the application.
 4a) Of the above claim(s) 2,3 and 5-8 is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1,4 and 9 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 31 July 2003 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

This is the third office action for application number 10/631,272, Method and System for Temporary Attachment of a Container to a Vehicle, filed on July 31, 2003.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 1, 2005 has been entered.

Election/Restrictions

Claims 2, 3 and 5-8 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species or invention, there being no allowable generic or linking claim.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

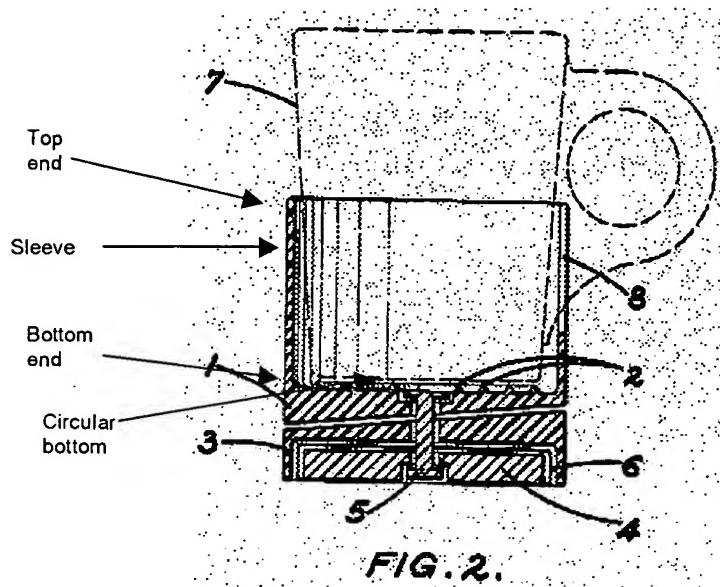
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter that the applicant regards as his invention.

Claims 1, 4 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, it is not completely clear if the vehicle is being positively recited as part of the invention or not. The preamble recites the vehicle functionally (“for securing...to...a vehicle...”), but then the vehicle is recited positively in the last paragraph (“wherein at least a portion of the cushion is positioned between the magnet and the exterior surface of the vehicle...”). The applicant must make it clear whether the vehicle is being recited positively or functionally. For instance, stating --is *adapted to be* positioned between...-- and --comprised of a material that is *adapted to substantially resist* scratching...-- would recite the vehicle merely functionally, and the Examiner will assume this is so for the purposes of this office action.

Claim Rejections - 35 USC § 103

Claims 1 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent number 3,524,614 to Sorth in view of U.S. Patent number 5,491,621 to Duty.



Sorth '614 discloses an attachment device (above) comprising a holder (1), a magnet (4) that is connected to the holder (via 5) wherein the magnet is of sufficient strength. However, Sorth '614 fails to specifically teach a cushion to be connected to the magnet wherein at least a portion of the cushion is inherently adapted to be positioned between the magnet and an exterior surface. Nevertheless, Duty '621 divulges an attachment device (figures 1-4) including a magnet (38) with a rubber cushion/boot (42) wherein it is *specifically* stated that the rubber cushion/boot is for preventing the magnet from scratching or marring the panel of a car (column 3, lines 18-21). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the magnet of Sorth '614 so as to have a rubber cushion/boot connected thereto as in Duty '621 which would inherently be positioned between the magnet and the exterior surface of a vehicle so as to prevent the magnet from scratching or marring the panel of a vehicle.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sorth '614 in view of Duty '621, and further in view of U.S. Patent number 4,844,400 to Jasmagy, Jr.

Sorth '614 in view of Duty '621 disclose the previously described invention wherein the holder is a cup with a sleeve connected to a circular bottom (above), wherein the sleeve has top and bottom ends, but fail to specifically teach the sleeve to be a conical sleeve with a top end having a greater diameter than a bottom end. Nevertheless, Jasmagy, Jr. '400 divulges an attachment device (figures 1-3) including a conical sleeve (12) having a top end with a diameter greater than that of a bottom end. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the sleeve of Sorth '614 in view of Duty '621 to be a conical sleeve with a top end with a diameter greater than that of a bottom end so as to allow for a greater number of various sized containers to be held in the holder of the attachment device.

Response to Arguments

Applicant's arguments filed March 1, 2005 have been fully considered but they are not persuasive.

Applicant's arguments with respect to claims 1, 4 and 9 have been considered but are moot in view of the new ground(s) of rejection.

The declaration under 37 CFR 1.132 filed March 1, 2005 has been entered and considered but does not overcome the rejection of claims 1, 4 and 9 due to the newfound secondary reference of Duty '621.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jon A Szumny whose telephone number is (703) 306-3403 and (571) 272-6824 after April 7, 2005. The examiner can normally be reached on Monday-Friday 8-4.

The fax phone number for the organization where this application and proceeding are assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113 and (571) 272-3600 after April 7, 2005.



Jon Szumny
Patent Examiner
Technology Center 3600
Art Unit 3632
March 16, 2005